

Department of Justice

§ 5.306

§ 5.300 Burden of establishing availability of exemption.

The burden of establishing the availability of an exemption from registration under the Act shall rest upon the person for whose benefit the exemption is claimed.

§ 5.301 Exemption under section 3(a) of the Act.

(a) A consular officer of a foreign government shall be considered duly accredited under section 3(a) of the Act whenever he has received formal recognition as such, whether provisionally or by exequatur, from the Secretary of State.

(b) The exemption provided by section 3(a) of the Act to a duly accredited diplomatic or consular officer is personal and does not include within its scope an office, bureau, or other entity.

§ 5.302 Exemptions under sections 3(b) and (c) of the Act.

The exemptions provided by sections 3(b) and (c) of the Act shall not be available to any person described therein unless he has filed with the Secretary of State a fully executed Notification of Status with a Foreign Government (Form D.S. 394).

§ 5.303 Exemption available to persons accredited to international organizations.

Persons designated by foreign governments as their representatives in or to an international organization, other than nationals of the United States, are exempt from registration under the Act in accordance with the provisions of the International Organizations Immunities Act, if they have been duly notified to and accepted by the Secretary of State as such representatives, officers, or employees, and if they engage exclusively in activities which are recognized as being within the scope of their official functions.

§ 5.304 Exemptions under sections 3(d) and (e) of the Act.

(a) As used in section 3(d), the term *trade or commerce* shall include the exchange, transfer, purchase, or sale of commodities, services, or property of any kind.

(b) For the purpose of section 3(d) of the Act, activities of an agent of a foreign principal as defined in section 1(c) of the Act, in furtherance of the bona fide trade or commerce of such foreign principal, shall be considered "private," even though the foreign principal is owned or controlled by a foreign government, so long as the activities do not directly promote the public or political interests of the foreign government.

(c) For the purpose of section 3(d) of the Act, the disclosure of the identity of the foreign person that is required under section 1(q) of the Act shall be made to each official of the U.S. Government with whom the activities are conducted. This disclosure shall be made to the Government official prior to his taking any action upon the business transacted. The burden of establishing that the required disclosure was made shall lie upon the person claiming the exemption.

(d) The exemption provided by section 3(e) of the Act shall not be available to any person described therein if he engages in political activities as defined in section 1(o) of the Act for or in the interests of his foreign principal.

[Order No. 376-67, 32 FR 6362, Apr. 22, 1967, as amended by Order No. 463-71, 36 FR 12212, June 29, 1971]

§ 5.305 Exemption under section 3(f) of the Act.

The exemption provided by section 3(f) of the Act shall not be available unless the President has, by publication in the FEDERAL REGISTER, designated for the purpose of this section the country the defense of which he deems vital to the defense of the United States.

§ 5.306 Exemption under section 3(g) of the Act.

For the purpose of section 3(g) of the Act—

(a) Attempts to influence or persuade agency personnel or officials other than in the course of established agency proceedings, whether formal or informal, shall include only such attempts to influence or persuade with reference to formulating, adopting, or